

REMARKS

Applicants have carefully reviewed the arguments presented in the Office Action and respectfully request allowance of this application in view of the remarks presented below and the attachments to this amendment.

In telephone calls with the Examiner, the last being September 7, 2004, the Examiner indicated that the Response After Final submitted in response to the Final Objection of March 8, 2004 had not been entered. In particular, the Examiner indicated that the Response had listed all of the pending claims rather than only the amended claims, and therefore did not conform with PTO practice with respect to reissue applications. Consequently, the current Amendment filed in conjunction with the RCE lists only the amended claims, which includes claim 50 with added limitations and claim 58, which is deleted.

Claims 1 - 23, 33 - 50, 53 - 57, 67 and 69 - 85 are pending. In the Office Action of March 8, 2004, claims 1 - 23, 33 - 49, 53, 57, 67 and 69 - 85 were allowed. Claims 50, 54 - 56 and 58 were rejected. Of the rejected claims, claims 50 and 58 are independent claims, and claims 54 - 56 are dependent claims which depend from claim 50.

By the present amendment, claim 58 is cancelled.

Concerning claim 50, it has been amended to include subject matter as suggested by the Examiner in the Final Rejection of March 8, 2004 to avoid the recapture rejection. Support for the added language, which generally includes "said grid pattern of resilient sections constituting means for providing a multiplicity of sections that sway laterally independently of one another to a substantial extent in response to forces applied by the foot, thereby reducing shear stresses on the bottom of a foot as the user walks along" may be found in column 3, lines 20-24 and column 13, lines 10-20 of the Specification.

Incidentally, regarding recapture, it is respectfully suggested that it should not be applicable to the claims as previously presented in this application, where the claims are significantly more limited in several areas and are directed to different subject matter as compared with the claims which were limited in the course of prosecution of the parent application. However, in order to expedite issuance of the Reissue application the claims under consideration are being cancelled or amended.

Regarding the Reissue Declaration, the Examiner has informed the undersigned in a telephone conversation of Sept. 7, 2004 that a declaration specifically referring to this particular amendment is required. Consequently, the undersigned will need time to gather signatures from those inventors who are willing to do so, and to file a petition with respect to any non-signing inventors. A new declaration will be submitted upon notification that the claims are in condition for allowance.

In the event that the amendments and the attached present papers do not place this application entirely in condition for allowance, it would be appreciated if the Examiner would telephone the undersigned. Thank you.

Pursuant to 37 CFR 1.173(c), the status (i.e. pending or cancelled) of all patent claims is as follows:

Claims 1-23 are original claims in the patent and are pending.

Claims 24-32 are cancelled.

Claims 33-50 are pending.

Claims 51 and 52 are cancelled

Claims 53-57 are pending.

Claim 58 is cancelled.

Claims 59-66 are cancelled.

Claim 67 is pending.

Claim 68 is cancelled.

Claims 69–85 are pending.

The non-original independent claims include limitations relating to members that sway and/or means for reducing shear stress. These limitations are supported by column 3, lines 20-24 and column 13, lines 10-20 of the Specification.

Applicant respectfully requests a Three Month extension of time in which to respond to the Office Action. Applicant hereby authorizes the Commissioner to charge any additional fees, which may be required, or credit any overpayment to Deposit Account No. 06-2425.

Respectfully submitted,

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